

Approved as Submitted: December 17, 2003

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – DECEMBER 3, 2003**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney announced the below listed closed session item, indicating that one of the items listed under Close Session 1 is attributed to a threat of litigation via a November 23, 2003 e-mail from Judith Berkman to Council Member Greg Sellers.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

2.

EXISTING LITIGATION

Government Code section 54956.9(a)

California Court of Appeal, First Appellate District

Case Name: Santa Teresa Citizen Action Group, City of Morgan Hill, et al. v. Hearing Board of the Bay Area Quality Management District, et al.

Case Number: A102518

3.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Legal Authority Government Code 54957

Public Employee Performance Evaluation: City Attorney

Attendees: City Council, City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that the Council approved entering into a joint prosecution defense confidentiality agreement between the City of Morgan Hill, City of Gilroy, County of Santa Clara and the Santa Water Valley Water District.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Mayor/Chairman Kennedy led the Pledge of Allegiance.

CITY COUNCIL REPORT

Council Member Carr reported on the following:

City-School Liaison Committee: This Committee meets on a monthly basis, alternating meeting locations between the City of Morgan Hill and School District Offices. It has been decided to meet at school sites to experience first hand traffic concerns and other school issues. At the last meeting, the Committee discussed traffic issues, safe routes to school, and the idea of joint planning of facilities. He said that the City has needs for facilities that it is looking to build, including the continued need to figure out how to build a new library in Morgan Hill. The School District also has facility needs. At the last meeting, the Committee decided that it would jointly recommend to its respective agencies that an ad hoc joint planning committee be put together to look at these issues to come up with recommendations and possible ways to partner. It was his belief that at an upcoming Council meeting, the Council's representatives to the City-School Liaison committee would be bringing back a formal report on a recommendation to establish this ad hoc joint planning committee for Council consideration. School Board member representatives would be taking this same recommendation to the School District.

Commission on tax policy: He reported that he was appointed by former Governor Gray Davis to serve on Commission that looked at a tax policy for the State of California. Reviewed was how a tax policy

would relate to the economy we are in today, and possible recommendations that can be made on tax and fiscal policy at the state level. He indicated that this group has concluded its two-year work and that sometime this month; the Commission's report will be issued with copies being made available to everyone, including being posted on a website in the near future.

Council Member Tate said that at the November 19 Council meeting, the Council appointed him and Mayor Kennedy to a Library subcommittee to study what is going on with the library on a fast track. He said that the Committee met last week and will be meeting again tomorrow morning. He said that it was determined that there would be a couple of parallel tracks. Track A being the preparation of an application to submit for the third round of library bond funding. He indicated that this would return to the Council on December 17, 2003 for formal action. He stated that staff understands that this may be the direction the Council will be taking and that they are taking the appropriate steps to prepare for this. Track B is looking at alternatives, assuming the City will not receive State bond funds. He said that the Library subcommittee will be reviewing these alternatives when it meets tomorrow morning and goes through a site evaluation and funding. He stated that the Library agreed that it would seek stronger Council financial commitment to whatever recommendation would come from the meeting. He indicated that there is a third effort in parallel in terms of documenting the entire situation. He said that there appears to be quite a bit of confusion in the community about the difference between building a new facility and the operation of a facility. He noted that a library parcel tax has been in place for approximately nine years and that it helps pay for the operations of a library (21% of the total budget of the library). He indicated that this parcel tax expires next year. He stated that the Library Joint Powers Authority met today and agreed to place a ballot measure to extend the library parcel tax to fund the operations of the library on the March 2, 2004 election. He indicated that the parcel tax pays for the hours the library is kept open, books, and the maintenance of the library where the funding of a new library facility is strictly for building the new library facility. He stated that the Library subcommittee will be preparing a lot of documentation in response to questions that have been raised in the community. The City Manager passed along some of the research he has been doing on the library and that this information would help answer questions in terms of the history of the library facility in Morgan Hill and the RDA's involvement. This would help to have a simple approach to document where the library/City is and where it is going. He indicated that the library subcommittee will report as it moves forward.

Mayor Kennedy reported on the Urban Limit Line/Greenbelt Committee, indicating that several meetings have been held with another meeting scheduled for the upcoming Monday at the Community Center at 7:00 p.m. He indicated that this Committee is drawing an ultimate limit line and establishing a green belt around the City. He felt that the Committee was making a fair amount of progress, drawing a line around approximately 75% of the City. He indicated that the Committee has come across a difficult issue on the southeast quadrant. He said that the southeast quadrant has farmland and that is an issue of what to do with in terms of how the City should implement a greenbelt in this location if the City continues the process. He indicated that the Committee is wrestling with some very tough issues and that they will be discussing the urban limit line and greenbelt principles at the next meeting. They will also follow up on implementation issues raised that the City can insure is put into place once an urban limit line and greenbelt is established. He stated that the committee intends to present its report to the

Council sometime in February 2004. However, a progress report will be presented to the entire Council prior to this date.

CITY MANAGER REPORT

City Manager Tewes reported on what is/is not taking place in Sacramento and how it impacts Morgan Hill seriously. He said that the City has held workshops about the City's budget from time to time. He said that approximately six months ago, the Council adopted the general fund budget that pays for public safety such as e.g., police and fire, recreation, parks/street maintenance services, and the general purposes of City government. When the Council did so, staff predicted that the City would need approximately \$16 million in revenue and that this would fall short by approximately \$400,000 of what the City needs to maintain the level of services that the Council and the community have come to expect. He indicated that the budget predicted that the City would need to dip into its reserve by approximately \$400,000. He stated that the last couple of months, he has come to the Council with worsening news about the state of the City's revenues. He said that the City's sale tax that was predicted to be flat declined significantly and that the transient occupancy tax declined as well. Since the Council adopted the budget, the legislature and Governor approved a State budget that did not fully finance the payments to cities and counties for the vehicle license fee (VLF). Staff anticipated that the City would lose three months of the "backfill" license fee. When staff reported this to the Council a couple of months ago, it turned out that instead of dipping into the cities reserves by approximately \$400,000, the City might have to dip further into the reserves for \$900,000. He reported that this week the legislature and the Governor are trying to work out a package to balance the State budget. There is a concern that the legislature may leave the special session at the end of week without having addressed the need to appropriate monies to backfill cities and counties for vital public safety services. If this happens, it would not be three months loss of VLF but an additional nine months which would result in the loss of another \$1 million. He stated that the City's reserves would be further depleted if this happens. He informed the Council that staff would be advising the legislature and the Governor of the absolute serious situation the City would be facing if it does not have the resources promised and pledged.

CITY ATTORNEY REPORT

City Attorney Leichter stated that she did not have a report to present this evening.

OTHER REPORTS

None.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Joan Ensign, co-president of the Morgan Hill Branch of the American Association of University Women (AAUW), stated that she was in attendance this evening with co-president Carol O'Hare and board members who represent the 121 members of this branch. She stated that AAUW supports a new library as promoting education is AAUW's primary mission. She noted that the current library is inadequate for a community of Morgan Hill's size to accomplish this mission. She requested that the Council reconsider its priority and give Morgan Hill citizens the library it thought it was getting when the Redevelopment Agency passed; one the community deserves.

Beverly Williams, President of the Friends of the Morgan Hill Library, stated that she is in support of a new library. She moved to Morgan Hill in order to become more involved in the community and have a sense of a better lifestyle. She stated that she has found this in Morgan Hill. She said that she has been amazed at the interaction between the library, business and the community. Considering how hard many individuals have been working toward getting a new library, she felt that they are getting tired and upset of being pushed aside as a new library that meets the community's needs is over due.

Phyllis McLaughlin, retired Morgan Hill librarian, read into the record a letter she submitted to the Morgan Hill Times about building a new library. The letter states that Morgan Hill needs a new library as it is needed to serve the current population and provide technological resources. She indicated that in 1981, the City of Morgan Hill established a Redevelopment Agency (RDA) that covered most of the land within the city limits at that time. Since 1982, part of the property taxes that would normally go to the Morgan Hill library has been diverted to the City's RDA. She noted that the original RDA was set up to collect \$100 million in tax increments. In 1990, as this limit was approached, the City began a campaign to extend the RDA and collect another \$150 million. She indicated that the voters of Morgan Hill rejected the first and second attempts to extend the RDA. In order to get the RDA extension passed, the City implemented a visioning process whereby the residents of Morgan Hill would let the City know what facilities they want built with RDA funds. When the visioning process was completed, a new library was one of the highest rated projects. She said that the next time the RDA extension was on the ballot, it passed as most library supporters felt that a new library would be assured. She noted that many of the projects rated high by the visioning process have been built or are in the process of being built. She said that most of the money to be collected by the RDA has been committed to various projects. She indicated that the City Council/RDA has repeatedly stated that there is not enough money to build everything identified in the visioning process. She stated that the RDA allotted \$5.4 million for the new library with the hope that the remainder of the \$20 million would come from a state grant. She said that the City, in conjunction with the library, has now spent thousands of dollars and many man hours to apply for state funding twice. She stated that many communities have a greater need than Morgan Hill, noting that Morgan Hill has a source of funding for a new library; the RDA. There is now a third and final round of applications for State bond money. She indicated that the Council has decided to apply once again for state monies. The Library Commission has recommended against trying for the third round of State funding as a third application would involve reworking the application and completing a new needs assessment costing thousands more in tax payer dollars. Going through the third round of bond funding and learning the results would result in all of the remaining money of the RDA's \$150 million being committed to other projects; resulting in nothing being left to build a new library. She said that for reasons of fairness and practicality, she did not believe that this should happen. She stated that in over 20-years of the RDA, the library has lost millions of dollars and will continue to do so into

the future. She felt that the recreational facilities built, under construction or in the planning stages are worthy projects providing for the recreation of Morgan Hill citizens. However, she argued that the library provides not only for recreational needs but for the education of the community. She indicated that the regulations of the RDA do not allow this money to be used for on going operations. The City of Morgan Hill would have to dip into its general fund to pay for operational expenses not covered by fees from other RDA projects. She noted that the library would not cost the City a cent. She urged the Council to build the library now as it is needed. She said that many library patrons still believe that a new library will be built and have no idea that the library has been relegated to the bottom of the list and that the City has made no provisions to fund it if the money from the state bond issue does not come through.

No further comments were offered.

Mayor Kennedy announced the grand opening celebration of the Butterfield extension from San Pedro to Tennant Avenues to take place on Wednesday, December 10, 2003 at 9:30 a.m.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that item 3 be removed from the Consent Calendar.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1, 2 and 4-9, as follows:*

1. **RESOLUTION DECLARING INTENT OF CITY COUNCIL TO REIMBURSE ITSELF FOR CERTAIN WATER CAPITAL PROJECT COSTS WITH REVENUE BONDS**
***Action:** **Adopted** Resolution No. 5742, Declaring Official Intent on Behalf of the City Pursuant to Section 1.150-2 of the Treasury Regulations.*
2. **LAFCO FIRE PROTECTION SERVICE REVIEW**
***Action:** **Directed** Staff to Submit Written Comments on the Report Agreeing with the Report's Suggestions for Regional Solutions and to Participate in the Public Meetings.*
4. **EMERGENCY AUTHORIZATION FOR GUARD RAIL REPLACEMENT AT WATSONVILLE BOX CULVERT NEAR MONTEREY ROAD**
***Action:** 1) **Adopted** Resolution No. 5744, Declaring the Need for an Emergency Expenditure at Watsonville Box Culvert Near Monterey Road; and 2) **Appropriated** \$27,000 From the 2003-2004 Regional Drainage Non-AB1600 (304) Fund for the Emergency Guard Rail Replacement at the Watsonville Box Culvert Near Monterey Road.*
5. **DECLARE EQUIPMENT AS SURPLUS**
***Action:** **Declared** Equipment as Surplus and **Authorized** the Sale at Auction.*

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6. **DECLINE OFFER FROM KENDAL HILL OWNERS' ASSOCIATION**
***Action:** Directed Staff to Prepare a Letter Declining the Offer by the Kendal Hill Owners' Association to Accept a Parcel of Land.*
7. **2003-2004 HAZARDOUS VEGETATION PROGRAM**
***Action:** Adopted Resolution No. 5745, Declaring Weeds and Brush to be a Nuisance and Setting January 14, 2004 as the Date for the Public Hearing Regarding Weed Abatement, and June 2, 2004 as the Date for the Public Hearing Regarding Brush Abatement.*
8. **SPECIAL CITY COUNCIL AND SPECIAL BOARDS, COMMISSIONS, AND COMMITTEES MEETING MINUTES OF NOVEMBER 11, 2003**
***Action:** Approved the Minutes as Written.*
9. **SPECIAL CITY COUNCIL MEETING MINUTES OF NOVEMBER 19, 2003**
***Action:** Approved the Minutes as Written.*
3. **EMERGENCY EXPENDITURE FOR JACKSON BOOSTER WATERLINE REPLACEMENT PROJECT**

Mayor Kennedy noted that this item would authorize an emergency expenditure for the Jackson Booster Waterline Replacement Project. It was his belief that this pipeline was installed not too long ago. He was surprised that the pipeline would need to be replaced so soon. He inquired if there was any liability on the part of the manufacturer or the engineer.

Director of Public Works Ashcraft informed the Council that it was his belief that this pipeline was built with the original construction of Jackson Oaks. Therefore, the pipeline would be over 20-years old. He indicated that this is a high pressure line and is located on the top of the hillside. He did not believe that there was any liability with the original installer as it is staff's belief that the hillside is moving. He said that this is a brittle pipe that will be replaced with a steel pipe.

***Action:** On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0): 1) Adopted Resolution No. 5743, Declaring the Need for this Emergency Expenditure; and 2) Approved Transfer of \$55,000 from CIP Project #615095 to #610093; and 3) Approved Expenditure of \$55,000 for Emergency Construction to Abandon and Replace 575 feet of 8-inch Waterline above Jackson Booster Station.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

***Action:** On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the Council/Agency Board unanimously (5-0) Approved Consent Calendar Item 10, as follows:*

10. **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF NOVEMBER 12, 2003**
***Action:** Approved the Minutes as Written.*

Redevelopment Agency Action

CONSENT CALENDAR:

***Action:** On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Board unanimously (5-0) Approved Consent Calendar Item 11, as follows:*

11. **REALLOCATION OF LOAN FUNDS FROM MURPHY RANCH I TO MURPHY RANCH II**
***Action:** 1) Approved a Loan Increase of up to \$1,570,000 for Murphy Ranch II, but Only to the Extent That Sum is Repaid From the Existing Agency Loan on Murphy Ranch, Phase I; and 2) Authorized the Executive Director to Modify and Execute Loan Documents as Required, Provided the Approved Loan Amount is not Exceeded.*

City Council Action

OLD BUSINESS:

12. **APPEAL APPLICATION, AP-03-05: JARVIS-MORGAN HILL DEVELOPMENT PARTNERS** (Continued from 11/19/03) – **Resolution No. 5746**

Director of Community Development Bischoff presented the staff report. He indicated that at the Council's November 19, 2003 meeting, the Council directed staff to return with a resolution of denial of a church to be located within the Morgan Hill Ranch Business Park with the appropriate findings. He recommended that the Council adopt the resolution confirming the action it took at the November 19, 2003 meeting.

Council Member Carr indicated that the Council received a faxed letter from Rob Eves, Venture Corporation, and a copy of a termination letter stating that the church has withdrawn its offer to purchase Anritsu's property. He inquired whether the Council needs to formally take an action of denial.

Mr. Bischoff indicated that a conditional use permit runs with the land. He stated that even if Foursquare Church was to back out of the land purchase, it is still an entitlement that otherwise might be available to someone else. He stated that it would be appropriate for the Council to adopt the resolution, formalizing its past action.

Council Member Tate noted that the findings contained in the resolution are specific to this use.

Mr. Bischoff stated that the findings could equally be applicable to another church and that adoption of the resolution would confirm action taken by the Council.

Mayor Pro Tempore Chang did not know how the use permit could apply to another similar use.

Mr. Bischoff informed the Council that the Foursquare Church use permit application has not formally been withdrawn.

Mayor Kennedy felt that it would be a simple formality to act on the recommended actions.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0-1 vote with Mayor Pro Tempore Chang abstaining, **Adopted** Resolution No. 5746 , Approving Appeal.*

13. APPEAL APPLICATION, AP-03-06: JARVIS-ANRITSU (Continued from 11/19/03) – Resolution No. 5747

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0-1 vote with Mayor Pro Tempore Chang abstaining, **Adopted** Resolution No. 5747 , Taking No Action on the Appeal Application.*

14. REIMBURSEMENT OF THE APPEAL APPLICATION FEE FOR THE SANTA CLARA VALLEY AUDUBON SOCIETY AND COMMITTEE FOR GREEN FOOTHILLS (Continued from 11/19/03)

Director of Community Development Bischoff presented the staff report, indicating that the Santa Clara Valley Audubon Society and Committee for Green Foothills appealed an administrative decision to approve a temporary use permit (TUP) to allow continued maintenance and operation of a golf course at the American Institute of Mathematics located on Foothill Avenue. He said that the appeal of the administrative approval was heard by the Planning Commission, indicating that the Commission did not concur with the appeal and allowed the approval of the TUP to stand. He indicated that the City establishes fees by ordinance and requires 100% cost recovery for all applications. He stated that the appeal fee for this action was \$1,084. He informed the Council that both organizations have submitted a letter identifying the reasons they believe the appeal fee should be reimbursed. Staff noted that the City has incurred all costs associated with the review of the appeal. Should the Council decide to reimburse the appeal fee, appropriation should come from the general fund reserve.

Council Member Sellers noted that an issue was raised in the letter that addresses the cost and the costs relative to other cities. He inquired whether staff was familiar with the costs of similar actions in other cities. Further, would there have been another option for the organizations to pursue as indicated and whether it would have provided them with an opportunity to get a public hearing without going through the same cost that they had in this case.

Mr. Bischoff stated that the City's temporary use permit section of the Municipal code, when written, was envisioned to apply to the location of a temporary construction trailer on a piece of property or a sidewalk sale. He said that the Committee for Green Foothills felt the approval of a use of this magnitude was not something that should occur at a staff level. He said that the code was written in such a way that it does not make this distinction. He said that staff agrees with the Committee for Green Foothills' assessment and that an update of the zoning codes is being proposed to incorporate a hearing process before the Planning Commission for temporary uses of this magnitude. He stated that he knows that there are a number of communities that have an appeal of an administrative action with application costs which are significantly less than full cost recovery. He said that it is a Council policy how much it wants to charge for administrative review. He stated that he was not aware of other procedures used by other cities that might give an appellant an easier way or less expensive way to bring a TUP to the attention of the Planning Commission or City Council.

Council Member Sellers inquired how the timing of a formal hearing would have worked in this particular case.

Mr. Bischoff stated that the golf course was in operation from April 1 to September 30, 2003. He indicated that the City had concerns that the golf course would have impacts on the environment. Staff wanted to impose conditions that would mitigate any adverse impacts to the environment while waiting for the environmental impact report to be completed. If the City would have a more protracted process involving public hearings before the Planning Commission and the City Council, the application would have been delayed as well as the imposition of the condition(s) intended to mitigate and lessen the impacts to the environment.

Mayor Pro Tempore Chang inquired whether the applicant should share in part of the appeal cost.

Mr. Bischoff responded that the City has never required an applicant to share the cost in any City appeals.

Mayor Kennedy inquired whether the City was charging enough for the TUP to achieve full cost recovery.

Mr. Bischoff responded that staff did not collect full cost recovery fees for this TUP/Appeal. Therefore, staff is looking at amending the City's code and that it would be proposed that a TUP application fee for this kind of use be significantly higher. He indicated that the entire process for the TUP has to be changed.

Mayor Pro Tempore Chang felt that it would be fair, in this case, to charge the same TUP fee so that the applicant and the appellant have the same playing field.

Mr. Bischoff stated that the process does not look at making the fees equal but looks at the average costs associated with various applications. He suspected that the new fee for a TUP of this magnitude would be significantly higher than what it would be for an appeal. In response to Mayor Pro Tempore Chang's question, he did not have a suggestion as to what would be a fair refund as it is a policy matter for the Council to consider.

Mayor Kennedy opened the floor to public comment.

Craig Breon, Audubon Society, said that the TUP system in place is not appropriate for a temporary use like this one. He was pleased to hear that staff is proposing making changes to the ordinance. He noted that it was their action that pointed out the problem. He felt that it was to their credit that the system would be fixed. He said that he pays a \$50 fee to appeal the Director's action in San Jose and that he would be happy to pay this fee in Morgan Hill. He stated that he believes in cost recovery. However, in this instance, someone pointed out that individuals who have a strong stake on the issue did not have an opportunity to speak on a matter of significant public concern unless they paid \$1,000. He felt that this was an issue of fundamental unfairness in this instance. He stated that almost everything about the Institute of Mathematics has been unique. He felt that the Council should make an individualized determination tonight, agreeing with staff that the system needs to be changed.

Brian Schmidt, Committee for Green Foothills, said that this is a significant issue that extends beyond these two organizations. He felt that members of the public would be surprised to learn that they would not be able to participate in a decision that would affect the public without paying \$1,000. He did not believe that it was appropriate to charge an appeal fee in this case. He felt that it was important to keep in mind that the reason that this appeal occurred was because the City granted a benefit to a private party. He said that the City needs to anticipate the likelihood of appeals occurring and incorporate this into the cost, especially for projects that are significant such as this one. He said that the City tried to help the Committee for Green Foothills and the Audubon Society in working with the golf course operations. However, he was not told at that time that participating in the negotiation process would weigh against them in any type of request for waiver of the appeal fees. He said that they might have weighed things a little differently in this situation. The reason a TUP exists for this course is attributed to the fact that they told the City what was going on and that they filed an enforcement complaint that made the TUP occur. He felt that for all the public benefits the City reached and the actions taken, it is felt that the fees should be waived or reduced to \$50.

No further comments were offered.

Mayor Pro Tempore Chang felt that the appeal fee should be equal to what the applicant paid for the TUP. She did not know if the \$50 was the right amount.

Brian Schmidt indicated that he spoke briefly with Planning Manager Rowe who indicated that the Institute of Mathematics paid approximately \$1,000 for the TUP process. This provided them the right to participate in discussion prior to being granted the permit.

Mayor Kennedy stated that he would support a reduction in fee in an attempt to be fair. He offered to refund half of the appeal fee with the understanding that the City will be revising the process to make sure that there is a better process in the future.

Mayor Pro Tempore Chang recommended that the applicant be charged 30% of the appeal fee.

Council Member Sellers said that he would like to have a reason to refund some of the appeal fees.

Mayor Kennedy noted that there was a question of fairness raised and that the process in place did not allow for an adequate public hearing. He indicated that an administrative decision was made that did not allow for a public hearing. He felt that the City should have this capability in the process. He stated that the applicant had his opportunity to apply for his permit but that the only way any one in the public who had any concerns or objections to get their thoughts and comments addressed was through an appeal process. He felt that the City needs to make sure that individuals have the opportunity to be heard.

Council Member Sellers agreed with Mr. Schmidt and Mr. Breon that this was a unique situation. Had the City gone through a hearing process; there would be no reason to have a permit in place as there would be subsequent actions to be taken. He stated that there might be an appropriate way to compensate these organizations for raising this issue. He felt that the City needs to be careful that it does not use one exceptional case as a standard. He recommended that the City be clear as to why there would be any reduction in fees for this particular instance so that the City does not receive similar requests from any number of appellants and/or creates a situation where you have a nuisance law suit. He noted that staff pointed out that the fees are in place to make sure that costs are recovered. However, he felt that it was the process that should be preserved, including its integrity, and that it not be in a situation where the Council would be asked to have fees waived all the time. He felt that there may be some relevance to making the reduction in this case as indicated by Mayor Kennedy. However, he wanted to make sure that the Council lays out what is unique about this case.

Council Member Tate said that he was struggling with the request as there is an issue of fairness, noting that the City had a policy in place. He stated that the policy and practice were followed and that it could be called unfair. The City may have other rules and regulations in place that are unfair as well. However, these are the rules in place and if not enforced as they exist, the City would have to appropriate monies from the reserves to cover any actions taken by the City, noting that the City spent a great deal more time in this case. The City followed the process in place whether it was the right one or not. It was found that it was the wrong process and that the City would be changing the process. He did not believe that the City would want to go back and see who it owes money to as a practice.

Council Member Chang agreed that the Council should not look at all cases but that it should establish some type of principals. She said that when the rules and regulations were established the Council felt that it was the right thing to do. She felt that it was the role of council members to review the process

and try to correct problem areas. She was looking at the equality issue of a TUP application as opposed to the appeal fee. She inquired whether it would take more time to evaluate a project from the beginning to the end. She noted that when individuals come forth with an appeal, staff is already aware of the situation and would not require 100% evaluation of the entire project. She inquired whether a 50% refund was a reasonable estimate.

Mr. Bischoff indicated that the appeal fee is the same whether it is a TUP or an appeal of a conditional use permit, zoning or any other type of application. He said that many of these permits have an application fee of approximately \$3,000. He felt that it was a magnitude of 3-1 as a general rule between the actual processing of an application versus the processing of an appeal as a more accurate estimate.

City Attorney Leichter felt that the Council has other reasons before it should it want to mitigate the fees on the basis of equity. She noted that the appellants pointed out a process that was not completely viable in this particular situation. To base it on a percentage of cost recovery would undercut the cost recovery analysis adopted by the Council. She would be hesitant to advise the Council to take any action based on this rational.

Council Member Carr thanked the Committee for Green Foothills and the Audubon Society for being involved with the City through this process. He felt that it has aided the process and that the City has learned a lot from it. He was pleased to hear that staff is already proposing to look at amending the code to improve the entire process and looking at the application and appeal fees. He agreed that the Council has a process, works by the rules and works through the process. It has been agreed that the process needs to be changed, but that the fact remains that the work happened under a different process. He felt that the Council needs to stand by this. He stated that he was willing to compromise from this position and state that the City will be going through the process of amending the code to improve the appeal process. He recommended that this work be done first in order to determine what will result from the work; finding out what the new recommended fee would be. The Council can then discuss how this fee can be applied to this case and perhaps refund the difference if in fact is less. This would provide the Council some justification for why the City is charging a new fee versus randomly stating that it believes that there are some fairness issues to justify reducing the appeal costs.

Council Member Sellers stated that should the City proceed as recommended by Council Member Carr, the appropriate action to take would be to go back to the applicant and state that the TUP costs were greater and that the City would be charging additional fees. He said that the logic and consistency would be to do both. He felt that the fairness issue should be the one that should be pursued. He inquired how long the evaluation process would take.

Mr. Bischoff indicated that staff is undertaking an assessment of establishing a new process for TUPs of this magnitude and was not looking at amending fees for appeals as the cost for processing appeals would not change.

City Manager Tewes said that it is the Council's policy that periodically, and no less than every five years, the City is to undertake a comprehensive fee study to ensure that the City is covering its costs. If the Code was amended to provide for a different process, this would be evaluated for its cost.

Mayor Kennedy inquired whether it was Council Member Carr's recommendation that the Council direct staff to look into what would be an appropriate appeal fee and not take any action until such time that staff has done this.

Council Member Carr indicated that this was what he was recommending. He said that it appears as though staff will be looking at a situation where a TUP of this magnitude would automatically go to the Planning Commission in which case no one would file an appeal. He stated that he would like to see what would come out of staff's recommendation so that the Council is not just choosing a number.

Mr. Bischoff indicated that he suspects that it would be spring, April or May 2004, when staff would have an update to the code. He indicated that staff is evaluating the process of TUPs of this magnitude and more than likely, they would be heard by the Planning Commission and would not affect the appeal fee. He indicated that following the update of the code, a subsequent follow up step would be to establish a new fee for the TUP but that this would not affect the appeal fees.

City Manager Tewes indicated that the work that the Council has authorized is a comprehensive review of the zoning and subdivision codes, including the issue of conditional and temporary use permits.

Council Member Sellers said that should the Council pursue Council Member Carr's suggestion on staff's evaluation of the process, it may turn out that the organizations would not need to pay a fee and that the entire fee would be reimbursed.

City Manager Tewes said that should the Planning Commission approve a TUP, there is a right of appeal to the Council and that there would be an appeal fee to do so.

Council Member Sellers stated that he appreciates the fact that these two organizations were involved in the process. He said that the Council needs to continue the dialogue throughout this particular situation in the future. He had no doubt that the process the City ends up with would save a lot of money in the long run. He felt that it should be a City goal to try to make these opportunities as painless as possible. However, he said that he could not get beyond the fact that if the City starts altering the situation now, the City would create a situation where it impacts the appeal's cost recovery process. Therefore, he could not agree to refund the appeal fees this evening. He felt that everyone is dedicated so that in the long term, the City would make the appeal process for groups like this better in the future.

Mayor Pro Tempore Chang noted that it would be a long time before staff returns with a recommendation on the process. She felt that because of the fairness issue, the Council should do something this evening. She stated that she would support refunding 50% of the appeal fees.

Action: *Mayor Kennedy made a motion, seconded by Mayor Pro Tempore Chang, to reduce the appeal fee by 50%. The **motion failed** 2-3 as follows: Ayes: Kennedy, Chang; Noes: Carr, Sellers, Tate.*

City Council Action

PUBLIC HEARINGS:

Mayor Kennedy suggested that the Council address items 15, 16, 17 and 18 concurrently as they are all interrelated, as far as public comments are concerned. He recommended that the Council take separate action on each agenda item.

15. ZONING AMENDMENT, ZA-02-16; DEVELOPMENT AGREEMENT AMENDMENT, DAA-02-09: DEWITT-MARQUEZ – *Ordinance No. 1643, New Series*

Director of Community Development Bischoff presented the staff report for the four separate applications before the Council this evening. He indicated that all of these items were on the Council's agenda a couple of meetings ago. However, due to concerns of the Council members, the applications were delayed to schedule the subdivisions for public hearing and to give staff time to bring to the Council the reason why Price Drive be extended to DeWitt Avenue. He indicated that Monday afternoon, staff had an opportunity to meet with the Mayor, the developer of two parcels and residents for the John Telfer Drive and Price Court area to discuss some of the problems and possible solutions. He stated that one of the primary concerns raised by the neighbors in this area at the prior meeting was the extension of the street. At the meeting held Monday afternoon, there was discussion about alternatives that might address the neighbors' concerns. He said that an outcome of this meeting was that the developer agreed to investigate the feasibility to have Price Drive develop as a knuckle instead of having Price Drive extend straight through. A cul de sac would be established on the street such that the development would still provide the looping circulation staff believes would be necessary for emergency vehicles and police patrol but making it circuitous enough that it would address the neighbors' concerns about through traffic entering their neighborhood. He indicated that at the conclusion of the meeting, the developer agreed that this was something that he would investigate to see if it would be feasible. At the meeting, it was agreed by all in attendance that what would take place this evening is act on the development agreements for two parcels as the applicant needs additional time so that he would not be in default. He said that there is no doubt that the process has been delayed because of the discussions relating to circulation. There would be a delay in approving the RPD for the entire property and that there would also be a delay on the subdivision approvals to the Council's January 21, 2004 meeting. Based upon this agreement, it was suggested to the neighbors in attendance that it was not necessary to attend this evening as there was some assurance given that action would not be taken on the subdivisions. He indicated that the Council has a supplemental handout prepared by the engineer of the developer that shows the actual configuration and how the knuckle might work. He informed the Council that staff would recommend that with respect to item 15 that action be taken only with respect to the development agreement amendment and not with respect to the RPD. With respect to item 16, staff recommends that the Council approve the development agreement. Staff further recommended that items 17 and 18 relating to the subdivision applications be continued to January 21, 2004.

Mayor Kennedy stated that he met with the applicant and the residents. There was a follow-up meeting held with staff last Monday. He indicated that those in attendance reviewed various options. As he understands the concerns of the residents, it is primarily safety on their street as it is steep in certain

places with several blind curbs and no side walks. Another issue identified is potential flooding down Price Court. He indicated that the group met with staff and came up with several possible options to address the traffic safety concern. One suggestion was to have a double cul de sac on the Price Court stub and a cul de sac on the new street coming from DeWitt with the use of turf block in between the cul de sac to allow emergency vehicles to get through. Staff was asked to consult with police and fire personnel to see if the alternatives would be acceptable for emergency vehicle access. He indicated that the residents were proposing that either a gate or bollards be put in the middle of the street if the street is cut through, keeping it locked and that only emergency vehicles would be allowed to go through. A third alternative was to install a traffic circle with an island in the middle of the new street that would serve to slow traffic down. A fourth alternative would be the knuckle turn on Price Court to Price Drive that would allow the street to go all the way through, changing the name of Price Drive as it implies that this is a through street. He said that if and when Santa Teresa cuts through, DeWitt would be blocked and a cul de sac be designed at the end so that it does not tie in with Santa Teresa nor continue to the south. He inquired as to the feedback from police and fire with respect to circulation.

City Manager Tewes indicated that staff met with the group on Monday afternoon and that it was represented that in addition to the investigation that the developer would conduct, staff would have police and fire departments look at the alternatives with the expectation that staff would get back to the Council in 30-days as staff does not have responses yet.

Mayor Kennedy recommended that the final knuckle turn with the cul de sac and short street off DeWitt be approved.

Council Member Sellers noted that Mr. Bischoff mentioned that there was an indication to the residents that they would not need to be in attendance this evening. He did not want to be in a position where citizens would return to advise the Council that they were told that no action would be taken this evening. He inquired whether staff had some sense if the neighbors would approve the Mayor's recommendation.

Mr. Bischoff informed the Council that most of those in attendance this evening were also in attendance at the Monday afternoon meeting.

Mayor Kennedy said that the statement that was made at Monday's meeting was that the Council would act on the development agreements, and that the Council would continue the other applications. He did not know whether it was specifically stated that the residents did not need be in attendance this evening.

Mayor Kennedy opened the public hearing.

Dan Gluhaich, applicant, stated that he followed the plan per the original RPD when he started the project. He confirmed that he met with the homeowners and that he knew that they did not want Price Court to go through. He proposed a gate at first, indicating that public works staff was not supportive of it. He reviewed other alternatives that public works and planning did not support as well. He said that he and his partner laid out a plan that works for the benefit of the residents; and that they do not have a problem with it. The only problem experienced was that Planning Manager Rowe indicated that he

might not be able to get two permits on two lots because of the length of the loop street. He informed the Council that he does not own two parcels within the PUD. He indicated that those property owners do not have Measure P approval at this time. He said that he did not have a problem with the plan and welcomed the Council's approval this evening in order to move forward with the project. He said that he has to receive all his permits or the project would not be feasible. He requested that the Council work with him and provide permits for all nine lots. He stated that he would agree to install a bulb and loop street as depicted in the plans.

City Manager Tewes said the police and fire agencies comments would be addressed as long as a continuous street is proposed.

Mayor Kennedy stated that he heard that the fire department would agree to the installation of a turf block but that the police department would have to drive through loop so that they can perform their circulation route. He noted that this is no longer proposed as there were objections to this as well as to the use of bollards and/or a gate.

Mr. Gluhaich said that he does not have a problem with the use of turf block. However, the police department has a problem with its use.

City Manager Tewes indicated that it appears that the map as drawn shows Price Court from its existing stub would be an open public roadway to the east. He said that if a continuous road system is built, one does not need to worry about the other comments.

Mr. Gluhaich indicated that a barricade is not proposed at the terminus of Price Court as it exists today. He stated that the adjacent property owners have submitted an application for Measure P. He does not know whether the property owners will be successful in attaining building allocations. Therefore, he has no control over the two properties.

Mayor Kennedy said that there may be a delay in completing the northern most properties. This would result in having an extension of John Telfer Drive with another 90 degree loop at the end with one or two houses being developed.

Mr. Bischoff said that Planning Manager Rowe has expressed concern that the extension of a cul de sac would be longer than the current City standards allows. However, it is a policy matter that is within the Council's purview to discuss/approve the extension of a cul de sac.

Mr. Gluhaich pleaded with the Council to see if there was any way to see if the layout and circulation could be made to work as every month that goes by is creating more and more hardship on him and his partner. He stated that he was willing to work within the parameters that are required as long as he is able to attain the additional two permits.

Paul Conte, 16955 John Telfer Drive, indicated that John Telfer Drive is a race track, noting that it is a dead end street. Opening up any traffic to the court would make the area more dangerous. He would

state that he would support the installation of speed bumps in front of his house as he has a concern with safety.

Khristine Gagliardi, 16935 John Telfer Drive, said that there has not been an issue after 30 years and now there is a debate of a safety concern of the neighborhood of having the police and fire departments having an access as it was not a concern 20-30 years ago.

Mayor Kennedy said that it is more an issue of a City policy and what the City wants to do with police enforcement so that they have a loop access to the neighborhood. He said that the existing neighborhood would not have been designed as it exists today based on current city standards. Therefore, the city is stuck with the current condition. He said that the police force likes to have a loop access so that they can drive through and not end up in a dead end street as it waste their time and would not be appropriate way to design roads.

David Wright, 16830 Price Drive, stated that another reason to have the road loop to the left is to slow traffic down through the neighborhood.

Marc Nehamkn, 16925 John Telfer Drive, indicated that he and his neighbors have young children and that the road is very dangerous as it has a double blind and no sidewalks. He said that the majority of the residents are concerned with traffic and safety. He finds it incomprehensible that the traffic report states that the proposed circulation design would reduce traffic. He said that area residents know the neighborhood and where the children are and that strangers would come through and not know where the children are. He felt that the traffic study was misleading because it is neither qualitative nor quantitative. He felt that the proposal to make the curve in the street would help to reduce traffic. If the City wants to install sidewalks, he would be supportive of this effort but did not believe that there was room to do so.

Cynthia Bunch, 16830 Price Drive, thanked the Council for meeting with the residents and trying to work out a solution. She said that ideally, the neighbors would like the through road blocked. However, if the road can be tied to the loop road in order to detour some of the traffic, it would be supported. She said that a lot of people race down from Price Court, noting that it is a steep area. She said that her home is on a 30% incline. Therefore, the homes would not be built today based on city standards. She stated that there is a 50% steep increase from Price Drive to Price Court. The neighbors are concerned about the steep grade and slippage of homes. She would appreciate a circulation design that would slow traffic down. She noted that one home does not meet the minimum 20,000 square foot lot size that was agreed upon in 1996 by the Planning Commission. She requested that the homes against the existing homes meet the minimum lot size. She requested that it be stipulated that the future parcel seeking building allocations maintain the lot. She indicated that the last two years, the Santa Clara County Weed Abatement has come out and cut the weeds for that property. She felt that this service cost all tax payers money. She requested that the property owner take responsible for weed abatement and cover it either by landscaping or maintaining it on a regular basis.

Bill McClintock indicated that staff advised him that this project would not be back before the Council until January 21, 2004. He stated that he was ready to make the changes to the design as the plans are

completed for the development as approved by the Planning Commission. He felt that the neighbors agree that looping the street would slow down the traffic. He stated that he would like to go forward with the project. He indicated that the project proposes a longer than standard cul de sac. He said that the City had this situation recently in the Pat Ansuini project as well as the Coyote Estates development along Malaguerra. The Council actually allowed a longer than standard cul de sac because the developers did not want the through road to interfere with an adjoining development. He felt that a precedent exists to state that two more homes on a longer cul de sac would be satisfactory and everyone would go away knowing what will happen to the project. This would allow the applicants to continue with their projects.

City Manager Tewes clarified that if the County Fire Marshall orders weed abatement to be done, a lien is placed on the property and that the tax payers are not paying for this work.

No further comments being offered, the public hearing was closed.

Council Member Sellers inquired as to the applicant's ability to move forward and the timeframe.

Mr. Bischoff said that the additional time is not a function of staff work load or the number of items scheduled for the Council's December 17 agenda as it was the commitment to the 30-day period for which the developer would be looking at these alternatives. If the neighbors and Council feel comfortable that everyone has had adequate notice, there is nothing that would preclude staff from bringing the applications back to the December 17 Council meeting for action.

Mayor Kennedy said that it seems that the applications were in a position to move forward this evening as the residents and developers have agreed to the circulation design. This would allow the developer to pull his permits and meet the development schedule. He did not see a reason to delay the applications any longer.

Council Member Tate stated that he would agree to proceed as long as staff is comfortable that the only issue is the long cul de sac that needs resolution.

Mr. Bischoff said that the proposal was discussed in concept on Monday evening and that staff viewed the revisions late this afternoon. Therefore, he was not sure what kinds of comments would come from public works or planning division. He stated that he was not aware of any issues other than the extension of the length of the cul de sac.

City Manager Tewes indicated that the 30 days was based on a commitment made at a community meeting. If representatives who attended that meeting are satisfied with what is being seen this evening, there is no need to wait 30 days. He said that there were engineer drawings faxed to some Council Members today and that staff looked briefly at them this afternoon. He indicated that staff has to review the drawings. The Council may want to make a general indication of support of this concept. Staff would return to the Council on December 17 with a quick review of the map and subdivisions for items 17 and 18.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Continued** the Zoning Amendment (Prezone) application to December 17, 2003.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Development Agreement Amendment Ordinance No. 1643, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1643, New Series by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1618, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-02-09 FOR APPLICATION MMP-02-02: DEWITT – MARQUEZ TO ALLOW FOR A THREE-MONTH EXTENSION OF TIME FOR FINAL MAP SUBMITTAL AND A SIX-MONTH EXTENSION OF TIME FOR BUILDING PERMIT SUBMITTAL FOR FOUR (4) BUILDING ALLOTMENTS AWARDED IN THE 2002 RDCS COMPETITION (APN 773-08-014), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

16. DEVELOPMENT AGREEMENT DA-03-05: DEWITT-MARRAD GROUP – Ordinance No. 1642, New Series

See comments as stated under agenda item 15.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Development Agreement Ordinance No. 1642, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1642, New Series by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-05: DEWITT – MARRAD GROUP (APN 773-08-015), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

17. SUBDIVISION, SD-02-11: DEWITT-MARQUEZ

See comments as stated under agenda item 15.

City Manager Tewes indicated that the developers and the neighbors may want to know the Council's intention to approve a subdivision similar to the one presented to the council this evening. He clarified that the Council would not be approving the subdivision until the proper maps have been submitted to public works/engineering and approved by the City Engineer.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Continued** item 17 to December 17, 2003, indicating that it was the Council's intent to approve the tentative subdivision map as presented this evening.*

18. SUBDIVISION, SD-03-05: DEWITT-MARRAD GROUP

See comments as stated under agenda item 15.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Continued** item 18 to December 17, 2003, indicating that it would be the Council's intent to approve the tentative subdivision map as presented this evening.*

City Council Action

OTHER BUSINESS:

Action: It was the consensus of the City Council to consider agenda item 20 at this time.

20. DESIGN OF SANTA CLARA COUNTY'S COURTHOUSE PROJECT

Director of Business Assistance and Housing Services Toy indicated that the item before the Council was to provide comments to the County and their design team on the courthouse current design and commit funding for the shared driveway approach for the future City fire station and the county courthouse. He said that the County would be addressing new computer generated perspectives of the elevation as requested by the Council at the last meeting. The County will comment on the revised material and sample boards, give a current review of the current design and make the request that the City commit to funding the shared driveway approach between the future fire station and the county courthouse. He indicated that a concrete driveway is needed to support the return of the fire vehicles to the fire station. He stated that it should be noted that the City's landscape comments would be incorporated as overall comments on the 50% construction drawings and address the City's comments with future revisions in a construction document. He introduced Kevin Carrouth, Director of General Services with the County of Santa Clara.

Mayor Kennedy opened the floor to public comment.

Kevin Carrouth thanked the City Manager and the City Attorney for supporting and helping County staff with an agreement through the Council and through the County Board of Supervisors before the end of

the calendar year. He said that this would allow the County to sell bonds this calendar year that are worth over \$40 million to the County of Santa Clara. He said that it was important for the County to sell these bonds and commit this money this calendar year. He appreciated the City's support in making this possible. He reported on the current design of the courthouse, identifying design changes that have occurred since August. He indicated that revisions have been made to the materials sample board and that they were available this evening, indicating that warmer tones have been incorporated in the design as directed by the Council. He received the City's comments with respect to the landscape, indicating that they are considering them along with other comments received on the 50% construction documents. He was present to receive any other comments the Council may have on these documents. He informed the Council that there is one change that will not be seen this evening relative to the interior of the project. He said that Senate Bill 1732 passed in 2002 sets up the transfer of the courts from the county to the State. This bill requires the County to provide court facilities as were needed in 1996. He said that at that time, the courthouse was located in San Martin and that the County had three court facilities. He said that the County is only obligated to provide three courthouses. He has been working with the court where they would build four courthouses and that the State would be responsible for paying out the build out of the other two.

Mallory Cussenbary, courthouse architect, presented the colors and materials sample board. He stated that what is before the Council remains unchanged and the project is through the construction document phase. He said that he held another value engineering session to bring costs in line with the budget for the project. He was able to do so without any significant changes that would be seen at the courthouse. He indicated that the entry canopies were retained and incorporated improvements in some areas, including site fencing and side walls. Items that changed include the colors of one of the plaster items; provided additional sidewalk areas, changed a few of the tree planting patterns, provided fence upgrades, and made slight revisions to the Butterfield side mechanical screen wall to meet the Council's stated objectives. He said that he has significantly lightened and added warmth to the background plaster. He noted that the primary plaster is to be white and that there would be a secondary plaster color that would be in the recesses of the building. He felt that he has warmed the colors up and was confident that this was the right thing to do for this project and brings back warmth to the project. The sidewalk extension is continuous on Diana Avenue. There has been the removal of one tree from each of the bays as a result of further studies relative to site lighting. There was a goal of keeping the lights low on the parking lots and to have greater visibility for the security cameras. He indicated that the project accents the two pedestrian paths through the site. Even though some trees have been removed from secondary areas, the project still retains the concept of having the orchard. The project provides fencing upgrades. He addressed the mechanical screen wall, indicating that the design has lowered and minimized the presence of the space between the two buildings and made efforts to reduce the massiveness of the mechanical areas. An idea contemplated was to lower the walls and push it back from the face of the building. He did both, one of which he felt was working toward the objective. One worked against the objective, this was pushing the wall back as it revealed the two story corner of the mechanical volume attached to the courthouse. Subsequently, it becomes very prominent. In order to meet the objectives, it is proposed to lower the wall and bring it out slightly in order to obscure the two story height of the volume, giving a feel of a series of terraces and different volumes.

The Council reviewed the renderings prepared for the court house.

Mr. Cussenbary indicated that a landscape rock was introduced as an element due to the fact that the project is tight on land area to reach the amount of detention that has to be provided for this area. If the detention got any deeper, a fence would need to be installed. He felt that it would be a mistake to install a fence around the detention area.

Mayor Kennedy requested a visual be presented of what is being proposed as it is something that will have a lasting visual impact from the downtown side of the City and the train.

Mr. Cussenbary said that it is the idea to try and rationalize the landscape rock design so that it does not feel like a random pile of rocks. It is his hope to make it work as though it was providing a base and have a certain grandeur to it as a design intent.

Council Member Sellers thanked County staff for their continued cooperation and patience.

City Manager Tewes recommended that the source of funding for the concrete driveway come from the fire impact fund.

No further comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Appropriated** funding from the Fire Impact Funds for the Installation of a Concrete Driveway Between the Courthouse Complex and Future City Fire Station.*

19. AMENDMENT OF RESOLUTION NO. 5738 REGARDING WRITTEN ARGUMENTS REGARDING BALLOT MEASURE EXTENDING AND UPDATING RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) – Resolution No. 5739

City Attorney Leichter requested that the Council designate which council member(s) would be drafting the arguments in support of the ballot measure.

Mayor Kennedy recommended that Council Member Tate, as chair of the Measure P update committee, be authorized to draft the argument with the understanding that all council members would sign the argument.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the entire Council to sign the argument in support of the ballot measure for Measure P.*

Mayor Kennedy indicated that with other ballot measures, the Council was divided into different groups with some Council Members writing the ballot arguments in favor and others wrote the rebuttal arguments to avoid the issue of having a Council meeting in having all council members participate in the drafting of the arguments.

Action: *By consensus, the City Council **Adopted** Resolution No. 5739, Amending Resolution No. 5738 to Appoint Council Members Carr and Tate to Draft Arguments Regarding Ballot Measure Extending and Updating the City's Residential Development Control System (RDCS).*

21. INTERIM USES SUBCOMMITTEE STATUS REPORT

Director of Community Development Bischoff presented the staff report, indicating that the interim uses subcommittee was looking for direction from the Council whether they were in the right track. He noted that the staff report contained five specific suggestions from the interim uses subcommittee: 1) consider amending code that would allow conditional uses of a limited duration to not install all on-off site improvements; 2) add a requirement of public benefit finding to be made in order not to require all on-off site improvements; 3) make employment centers conditional uses in the CC&R zone; 4) require bonding for these improvements; or 5) require an exit plan such that when the use is getting close to the duration over which the Council would allow for improvements not to be installed, that a strategy or plan be put into place to ensure that the improvements are installed at the time that the temporary use has reached its duration.

Council Member Tate said that it was his feeling that the charge from the Council was to get this done in a short period of time. It would be his recommendation that if a public benefit could be found, the Council can selectively defer certain on and off site improvements for temporary uses. The City Council would make the determination of what constitutes a public benefit. He did not believe that it was worthwhile to try to come up with some general purpose definition because it seems that any time that a use of this nature comes before the Council, it would be specific to some kind of public benefit. He felt that the Council could state that the employment center that removes workers seeking daily employment from the street is a public benefit. He said that the Dayworker Committee is looking at a maximum of five years on the site. He said that he considers a temporary use be a duration of no more than three years. He recommended that the dayworker center be allowed for three years with a maximum of two, one-year extensions (up to five years). He stated that he liked the idea of an exit plan being submitted one year prior to when the use would vacate the facility. He felt that the specific items being requested be deferred must be individually approved, noting that the Council need not approve them all. He stated that staff could not find a city who did not see temporary uses convert into permanent uses. This is a danger the City needs to look out for. Therefore, he felt that an exit plan was very important and should have a lot of emphasis. He would like the dayworker center to move forward and accommodate it because he felt that some of the items can be deferred. On the other hand, the Council may be setting a precedent that it may not want to set. He said that staff's research gave them a lot of trepidation and that he understands this. He explained that an exit plan is a project management plan of a timeline of the actions to be taken to phase out of the temporary use. In this case, it would be the creation of a permanent facility.

Council Member Carr recommended that the exit plan be tied to a timeline of one or two years from the date of deferral. This would result in an applicant coming back to the Council with an exit plan within a year of approval of the deferral.

Council Member Tate felt that Council Member Carr's suggestion would be a little more aggressive than the dayworker committee would want to look at. It was his belief that the dayworker committee would want more experience than just the one year before they craft an exit plan.

Council Member Carr stated that it was his understanding that one year prior to the expiration of the deferral, an exit plan would need to be submitted. He said that the deferral would be for a maximum of three years with a maximum of two, one year extensions. Therefore, in year four, an exit plan should be submitted. He recommended that the exit plan be submitted earlier such as in year one or year two from the date the deferral was approved.

Mayor Pro Tempore Chang recommended that the decision of the exit plan be made on a case by case basis. She noted that the exit plan for the dayworker use is the construction of a new facility. However, by the end of year one, she did not know whether there would be enough success to know that the dayworker center is working or where they will be relocating.

Council Member Sellers felt that the exit plan was a sound concept and that the Council needs to figure out a way to implement it. He inquired whether the dayworker committee knows when they would be leaving the temporary use situation. He would hate to be in a situation where one is obligated to stay in the temporary facility and whether penalties would incur based on the lack of a submittal of an exit plan. He felt that the Council could give some latitude in terms of how much time you have from the beginning to submit an exit plan. He felt that a temporary use proponent should be working on an exit plan from the beginning as opposed to working backwards on an exit plan.

Mayor Pro Tempore Chang inquired whether finding a rental facility would be enough to satisfy an exit plan.

Mayor Kennedy inquired whether elements of an exit plan would include a schedule to vacate the premises.

Mr. Bischoff indicated that the Council would be allowing for a deferral of the installation of on-site improvements. The exit plan would identify how one would ensure that at the end of the three year period that these improvements are installed or the property is vacated. This means that the use moves out and that the modular buildings are removed from the property. At the end of the second year it would not be known if one would be granted an extension beyond the end of the third year. Therefore, it is proposed that at the end of second year, there would be an expectation that the user would come back to the City with a plan for vacating the premises and plans for site clean up, or that funding would be identified to install the deferred improvements.

Council Member Sellers noted that staff is recommending that within 24 months, an exit plan is to be submitted for a three year temporary use.

Council Member Carr stated that he did not consider it to be a temporary use if it exceeded three years in a location. If an exit plan is required within 12 months, this would be aggressive and may be asking for

too much. However, if the Council states that an exit plan is required within 24 months, it was his belief that the Council would receive it in 24 months. This would encourage a temporary use to be in place for up to three years.

Council Member Sellers inquired whether it could be stipulated that an exit plan is to be submitted within 12-24 months prior to vacating the property.

City Attorney Leichter stated that individuals coming in with a temporary use theoretically have an exit plan from day one. The longer the Council strings out the exit plan issue, it starts to give the appearance of a permanent use. She was not sure how the City would differentiate this in either the terms of drafting the ordinance for purposes of clarity or to defend against an equal protection law suit. She said that the City really needs to make this look as temporary as possible.

Mayor Kennedy recommended that it be required that an applicant develop an exit plan at the beginning and not wait to the end of the term of the temporary use. He recommended that after one year of occupancy, an applicant would develop an exit plan.

Council Member Sellers noted that an exit plan is not a complicated document. Should a user's plan change, the exit plan can be modified.

Council Member Carr requested that the subcommittee look at an exit plan being tied with a timeline of occupancy or the deferral of improvements. He agreed with the City Attorney that when one goes into a temporary use, one should have an idea about an exit before committing to a temporary use. It was his understanding of this project that the idea from day one when the doors open for the temporary use, the vast majority of the time should be spent on the permanent location as the committee has not been able to do so. He felt that as short of a timeline for the submittal of an exit plan is important.

City Attorney Leichter recommended two other considerations for the subcommittee, assuming that she would be receiving the direction to convert this into an ordinance. The first one is to define what would be considered a public benefit and how narrowly the Council wants to define it. What is the criterion that the Council will use to determine this (e.g. economic development, opportunities for low and moderate income individuals)? She inquired whether the Council wants it to be more broadly stated than this. The other issue is how the exit plan is to be processed; would it be approving the plan, refining it or the ability to modify it. She requested that the subcommittee give direction on these as it would be helpful.

Council Member Tate recommended that the definition of public benefit be kept as broad as possible so that the Council can have discretion in terms of things that might come up.

City Attorney Leichter indicated that the Council would need to recognize that it would get all sorts of arguments before it as to what constitutes a public benefit in terms of different temporary uses in the CC&R district.

Mayor Kennedy recommended that the interim use be an administrative approval with an appeal to the Council if there is a problem. With respect to public benefit in this particular instance, the nature of the use would improve the sanitation, health and hygiene of the community and of those who need/use the facilities. He said that there are basic sanitation public benefit issues that would result.

Mayor Kennedy opened the floor to public comment.

Julian Mancias said that the finding in the report indicated that other agencies have seen many temporary uses become permanent uses. He wanted to make it clear that the dayworker committee does not want to make the use permanent. It is their goal to find a permanent location, beginning on the search immediately. He stated that the dayworker committee would work on the exit plan as well. The committee wanted to ensure that interim uses apply to other uses. The City has the opportunity to create a model that may benefit other communities as this is not the only city that has this issue.

Mayor Pro Tempore Chang said that as far as the dayworker project is concerned, she felt that the deferred items being requested are actions that need to be taken to push the hurdle. She said that this is a small piece of the total picture.

No further comments were offered.

Action: **No Action Taken.**

22. CITY-WIDE SURVEY

Assistant to the City Manager Dile presented the staff report, indicating that the most economical option would be to participate in the National Citizens Survey with a base cost of \$7,500. She indicated that fully customized surveys are available but are more expensive at a cost of approximately \$17,000-\$23,000. The cost would vary depending on the size of the sample the Council was interested in looking at and whether or not the survey would be administered in more than one language. She indicated that the current year's budget does not include funding for a city-wide survey. Should the Council wish to pursue a city-wide survey, funding could come from the general fund reserves.

Council Member Sellers indicated that one of the survey foundations was retained recently on behalf of a client. He inquired whether he would have a conflict in discussing this item, indicating that it was not the National Citizens Survey that he retained.

City Attorney Leichter said that Council Member Sellers may have a common law conflict of interest. She recommended that he recuse himself from this issue as staff is requesting direction.

City Manager Tewes noted that staff is not requesting a specific contract with a specific firm. Staff brought this informational item to the Council to determine whether or not the Council wanted to proceed. Should the Council support conducting a survey, staff would proceed with a procurement process of some sort.

Council Member Sellers recused himself from this item and stepped down from discussion on this item.

Council Member Carr said that some type of a citizen survey is a very good idea and a good way to try to improve upon the things the City is doing. He inquired whether a representative from the National Citizens Survey would draft and conduct a presentation of the information gathered.

Assistant to the City Manager Dile responded that it was not her belief that a presentation before the Council is included in the cost but that the City would receive a detailed report and possibly a phone consultation as their office is located in Colorado.

Mayor Kennedy said that in light of the City's budget situation, he did not know if the City should embark on a citizen survey right of way. He recommended that the Council retain the information presented by staff and discuss this at a Council goal setting workshop to see if it fits into some of the things that it wants to do.

Council Member Tate said that he is very interested in conducting a city survey. He likes the cost of the National Survey, given the City's budget situation. He said that it allows a little flexibility in asking some policy questions. He felt that the Council needs to understand better whether it can find out the citizens feelings of the Council's prioritization. He was not sure how much the Council can get with three or four policy questions but that before the retreat, the Council can understand this better.

Council Member Carr felt that discussion of a city-wide survey would be a good item to discuss at the Council's goal setting session. He felt that there is an urgency to some of the significant policy discussions that the Council needs to have on RDA funding and for setting priorities for the upcoming budget year. Coming out of the Council retreat with a recommendation would be a good idea.

Mayor Kennedy felt that it was time to conduct an update to the visioning process or proceed with a new visioning process. He noted that the last visioning update was conducted in 1995. He felt that this may be one element of the process.

Council Member Tate felt that the Council made commitments to the public in terms of what the City will do. To now state that the City will be stopping and not deliver the commitments made in a 2-3 year visioning process will not be received well by the community.

Mayor Kennedy clarified that he was not proposing that the City stop what it is doing. He felt that the Council needs to report to the public what the City has accomplished, where it is, and what needs to be done in terms of the visioning process. He was not implying that a full blown visioning process be undertaken but perhaps an update to the one previously conducted or some other version of this process.

Mayor Kennedy opened the floor to public comment. No comments being offered.

Council Member Tate recommended that this item be discussed at the Council's retreat.

Action: *By consensus, the Council **Directed** Staff to schedule the topic of a City-Wide Survey for the Council's upcoming retreat.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Sellers noted that the Council has tentatively scheduled a December 10, 2003 workshop relating to increasing water rates. He talked to the Finance Director and asked why a separate workshop was being requested. He said that in order to increase the water rates, the City would need to conduct a public hearing. He questioned if it would be feasible or advisable to have the workshop as part of the public hearing. It was the Finance Director's response that a workshop was proposed to help clarify issues for the Council. He said that at the last council meeting, there was some discussion on the water rates. He recommended that the workshop and the public hearing be combined, noting that the Council would be holding a public hearing in early January 2004 in order to increase rates. He stated that the Council would be holding a similar process in order to conduct a public hearing and increase the rates. As the Council recently had the discussion on water rates at its last meeting, the Council received clarification on the issues surrounding the water rate increase and provided staff with direction. He requested that the Council consider not holding a meeting on December 10 and wait until the first of the year to conduct a workshop when the Council will be holding the public hearing on the water rates any way.

Mayor Kennedy indicated that it was his understanding that the December 17 meeting has a full agenda.

Mayor Pro Tempore Chang indicated that she has a conflict in being able to attend the entire December 17 City Council meeting. She recommended that some of the December 17 agenda items be moved to December 10 so that there is a lighter meeting scheduled for December 17.

Council Member Sellers noted that the only item scheduled for December 10 was the water rates workshop.

Mayor Kennedy indicated that it was the original plan to have the City Attorney's performance evaluation held this evening, noting that the Council was not able to complete the performance evaluation this evening. He recommended that the City Attorney's performance evaluation be conducted on December 10 as well.

Council Member Tate said that it was his belief that questions relating to water rates would be answered in a workshop environment before holding a public hearing on water rates in terms of whether it should be a rate increase or alternative sources of temporary funding for what the City expects to get back from Olin Corporation.

Council Member Sellers requested that additional items be scheduled for the December 10 meeting in order to make the meeting worthwhile.

Mayor Kennedy suggested that some of the items scheduled for the December 17 be moved up to the December 10 meeting.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:57 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY